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UNITED STATES DISTRICT OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK

----- X	
KAREN SCOTT,	:
	:
Plaintiff,	:
	:
-against-	:
	:
WPIX, INC.,	:
	:
Defendant.	:
----- X	

10-CIV-4622 (WHP)

**DEFENDANT'S STATEMENT OF UNDISPUTED
MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1**

Pursuant to Rule 56.1 of the Local Civil Rules of this Court, defendant WPIX, Inc. ("WPIX") submits this statement of undisputed material facts as to which it contends there is no genuine issue to be tried.¹

I. Parties

1. In 1993, plaintiff Karen Scott ("Scott") began working at WPIX as the Executive Producer of the News and, in 1996, she was promoted to News Director. (Compl., ¶¶ 13, 16;

¹ The undisputed facts set forth herein are followed by citations to their support in the record. Copies of the pleadings, deposition testimony, and exhibits cited herein are annexed to the accompanying Declaration of Edward Cerasia II, Esq. ("Cerasia Decl.").

Deposition of Karen Scott (“Scott Dep.”) at 10.)

2. Scott was born on [REDACTED], 1949. (Compl., ¶ 2; Scott Dep. at 236.)

3. WPIX is a television station that is owned by Tribune Broadcasting, a division of Tribune Company (“Tribune”). (Deposition of Jean Maye (“Maye Dep.”) at 7.)

II. Scott’s Job Duties As WPIX’s News Director

4. As the News Director, Scott was responsible for, among other things, the overall supervision of the News Department, the Nielsen ratings for the News programs, making sure the News Department turned a profit, and for developing and executing strategies designed to make WPIX’s News product the audience leader in the New York metropolitan market. (Deposition of Betty Ellen Berlamino (“Berlamino Dep.”) at 19, 29-30, 49; Scott Dep. at 15-17.)

5. Scott was responsible for the News at Ten, the Morning News, the weekend newscasts, News Close-Up, political talk shows, breaking news reports and everything shot on a live basis. (Scott Dep. at 24-25; Berlamino Dep. at 59.) The entire News staff reported to Scott directly, including the Assistant News Director, Executive Producers, Assignment Desk Personnel, Managing Editor, Writers, Anchors and Reporters. (Scott Dep. at 25; Berlamino Dep. at 52.)

6. Scott also was responsible for making employment decisions as to “on-air talent” (*i.e.*, anchors and reporters) and off-air staff for all News programming. (Scott Dep. at 15-18.) Scott was involved in decisions to extend or renew on-air talent contracts for the anchors and reporters. (Scott Dep. at 17-18; Berlamino Dep. at 50-51.) Scott negotiated contracts directly with the on-air talent and their agents or representatives, subject to final approval by her boss, Betty Ellen Berlamino (“Berlamino”), who was the General Manager and President of WPIX. (Scott Dep. at 12, 17-18; Berlamino Dep. at 7, 50-51.)

7. Scott reported to Berlamino from 2000 until her termination on August 26, 2009. (Scott Dep. at 12; Berlamino Dep. at 7.)

III. Berlamino's Job Duties As WPIX's General Manager

8. In October of 1994, Berlamino began working at WPIX as Vice President and Station Manager. (Berlamino Dep. at 7-8.) Berlamino's date of birth is [REDACTED] 1959. (Declaration of Cathy Davis ("Decl. Davis"), ¶ 2.)

9. In December 2000, Berlamino was promoted to President and General Manager at WPIX. (Berlamino Dep. at 7.) She reported to senior management at Tribune in Chicago. (*Id.* at 41.)

10. As General Manager, Berlamino supervised the News, Sales, Research, Traffic, Finance, Local Production and Community Affairs, Human Resources and Creative Services Departments, and was responsible for the overall profitability of WPIX. (Berlamino Dep. at 8, 12, 20-21.)

11. Berlamino's employment with WPIX was terminated on June 7, 2010, because the senior management team at Tribune that took over in 2008 did not select her to be a part of their senior management team going forward. (Berlamino Dep. at 7, 24-25.) In addition, Berlamino was told that it was apparent to Tribune senior management that she did not like their management style, as she early on questioned the fact that they had taken away most of her decision-making authority at WPIX and, instead, dictated decisions for her to execute. (*Id.* at 26.)

12. Berlamino's termination did not come as a surprise to her because, after WPIX received the November 2008 Nielsen ratings showing a drastic decline, she predicted that Scott would be out of a job and she would be next. (Berlamino Dep. at 158.)

IV. Scott Enjoyed A Good Working Relationship With Berlamino

13. Up until the day she was terminated on August 26, 2009, Scott believed that she and Berlamino had a good working relationship, as there was no hostility or animosity between them. (Scott Dep. at 232.)

14. Berlamino did not make any decisions with regard to Scott's employment on the basis of her age between 2000 and December 30, 2008. (Scott Dep. at 176-77.)

15. Scott believed that, from 2003 through 2008, Berlamino wanted her to succeed as the News Director. (Scott Dep. at 125.)

V. The Profitability Of The News Depends Upon Nielsen Ratings

16. The profitability of the WPIX News Department is measured by how much revenue it generates from advertisers. (Scott Dep. at 22-23.)

17. The News Department increases its profitability when the Nielsen ratings for its News programs are high, because the amount that an advertiser will pay for commercial time is directly related to the station's Nielsen ratings. (Scott Dep. at 22; Berlamino Dep. at 138.) Nielsen ratings are audience measurement systems developed by Nielsen Media Research, in an effort to determine the audience size and composition of television programming in the United States. (Scott Dep. at 21; Berlamino Dep. at 210-11). Nielsen is an independent third-party company, unrelated to WPIX, to which all television stations in the New York metropolitan area subscribe for ratings. (Scott Dep. at 21.)

18. An important and "key" factor to generating Nielsen ratings is "relevant content" of the News show. (Charlier Dep. at 37-38.) Other factors include "breaking news coverage, quality of the on-air performers, [and] the promotion that surrounds the product." (*Id.* at 38.)

19. Scott, Berlamino, and all the other New York City television stations thought that

Nielsen ratings were flawed; however, that did not change the fact that WPIX and all of its competitors were subject to, and valued by advertisers based upon, the exact same “flawed” rating system. (Scott Dep. at 83-84; Berlamino Dep. at 212-13.)

20. The primary demographic for the WPIX News was adults ages 25 to 54. (Berlamino Dep. at 91; Charlier Dep. at 89.) The secondary demographic was adults ages 18 to 49. (*Id.*)

21. While Nielsen ratings are always important, they were particularly important during the months of February, May, July and November, because those months are referred to as the “sweeps” ratings periods. (Scott Dep. at 59-60; Berlamino Dep. at 252.) Advertisers rely on the Nielsen ratings generated during the sweeps, particularly the November report, when deciding to purchase on-air advertisements and how much they will spend in the upcoming year. (Berlamino Dep. 163, 306.)

22. The Nielsen ratings for WPIX’s News programs were generally lower in comparison to their competitors. (Scott Dep. at 82-84.)

23. Scott understood that revenue was generated off of on-air ad sales, which depended on the Nielsen ratings, and thus understood that if WPIX had a zero rating it would not have a product to sell to advertisers. (Scott Dep. at 130-31.)

24. While winning local news awards, such as Emmy Awards, was a positive result that was celebrated by WPIX, those awards had no bearing on the profitability of WPIX’s News because advertisers only base their rates and pay on the Nielsen ratings. (Berlamino Dep. at 137-38, 141; Scott Dep at 55-56; Maye Dep. at 48.)

25. Scott understood that the News Department was expected to make a profit and that her performance was judged on the Nielsen ratings for the News. (Scott Dep. at 19, 29-30.)

26. Berlamino monitored the Nielsen ratings on a daily basis and e-mailed the managers in the News Department whenever she received a poor ratings report. (Charlier Dep. at 56-57; Scott Dep. Exs. 4, 8-11, 13-15, 20, 22, 25.)

VI. The New Senior Leadership Team at Tribune Directed Changes At WPIX

27. In December 2007, Sam Zell (“Zell”) led a leveraged buy out of Tribune, which had previously been publicly traded. (Scott Dep. at 72.) Zell installed new senior management with the vision for all of the Tribune television stations to differentiate its news product from its competitors. (Berlamino Dep. at 32, 292.) Tribune senior management wanted an electronic News Department that covered “three screens” – television, the internet and mobile devices – to meet the ultimate goal of making the News profitable. (*Id.* at 32, 96.)

28. General Managers of all the Tribune stations were under pressure to make the changes based on the vision of Tribune’s new senior management team. (Ramirez Dep. at 32.) To implement their vision, the new senior management expressed the need for change and the reduction of staff at WPIX. (Ramirez Dep. at 13-14, 24-25.)

29. Tribune’s new senior management’s vision and demand for change at WPIX put a lot of pressure on Berlamino and Scott to make the News Department profitable through increased Nielsen ratings. (Scott Dep. at 77-79; Berlamino Dep. at 32.)

30. In December 2008, Tribune and WPIX filed for Chapter 11 bankruptcy. (Scott Dep. at 77.) Coupled with the recession, the bankruptcy put even more pressure on all department heads to turn profits and control expenses. (Scott Dep. at 79; Charlier Dep. at 31-32, 114.)

31. In early-2008, Steven Charlier (“Charlier”) became Senior Vice President of News and Operations at Tribune, based out of Chicago. (Scott Dep. at 99; Charlier Dep. at 6, 11,

15.) Charlier was responsible for working with Tribune's affiliate stations, including WPIX, to increase ratings, improve overall efficiency and grow revenue for the News Department.

(Charlier Dep. at 9-10, 16-17; Ramirez Dep. at 18.)

32. Berlamino was Charlier's primary point of contact at WPIX. (Charlier Dep. at 19.)

33. Charlier was involved in personnel decisions at WPIX with regard to the News Department. (Charlier Dep. at 21.) While Berlamino did not need Charlier's approval to make a decision with regard to her staff, he provided guidance and leadership. (Charlier Dep. at 25.)

34. In late-2008, Charlier began to visit WPIX once every two months to tour the station, get to know the employees, and evaluate the on-air product and the technical product behind the scenes. (Charlier Dep. at 17-18.) When Charlier was not physically at WPIX, he watched the news broadcasts and followed the revenue and daily ratings for the News. (Charlier Dep. at 18, 20.)

**VII. Scott's Unsatisfactory Performance And The
Decline In Nielsen Ratings Resulted In Net Losses**

35. Scott did not dispute the contents of her 2003 through 2006 performance evaluations prepared by Berlamino because she did not have an issue with them, nor did she believe that they contained anything that was discriminatory because of her age. (Scott Dep. at 45, 47-49, 54-57, 61, 66-67.)

36. Overall, Berlamino believed that Scott was a good worker, but did not handle issues with her staff appropriately and lacked the ability to increase the News' ratings so that the News could turn a profit. (Berlamino Dep. at 44; *see* Scott Dep. Ex. 2 (critical comments in performance evaluations about managing employees and ratings).) Scott's inability to make the staff changes that were necessary to increase the News' ratings only contributed to Berlamino's

belief. (Berlamino Dep. at 45.)

37. Scott's inability to effectively manage her staff, for the sake of improving the News and ratings, was brought to her attention in her 2004 performance evaluation:

Karen sometimes "protects" people that work for her due to a tremendous sense of loyalty. To truly excel in this area, Karen will have to develop a staff that is able [to] seek opportunities to improve and change the newscasts and therefore increase the ratings and revenue.

(Scott Dep. Ex. 2.)

38. Berlamino echoed this sentiment in an e-mail she sent to Scott on November 15, 2004, in which she stated that, while the Nielsen ratings for both newscasts were declining and WPIX was losing money at "a vastly accelerated rate," there had been no replacement of staff and Scott's direct reports were all receiving good performance evaluations. (Cerasia Decl., Ex. J (WPIX 000094).) Berlamino requested a meeting with Scott to discuss this apparent disconnect. (*Id.*)

39. Scott's 2005 performance evaluation also highlighted a decline in the Nielsen ratings and a negative profit and loss statement for the News:

The ratings for both the morning and evening newscast have gone down dramatically and it has resulted in a negative P&L for news. While both the am and pm are to be congratulated on their Emmys, both shows are inconsistent in their quality and therefore fail to attract a loyal audience on a consistent basis.

(Scott Dep. at 56-57; Scott Dep. Ex. 2.)

40. Scott's 2005 evaluation was not the first time that she was made aware that the Nielsen ratings for both the evening and morning newscasts were on a downward spiral: Berlamino began to address that problem with Scott as early as February 2005, when she sent Scott an e-mail that opened with "For the first time ever, news is projected to operate at a loss in

2005.” (Scott Dep. Ex. 4.) Berlamino went on to state:

Ultimately, Karen, you’re responsible for the news, so I’m asking you to please take a HARD LOOK at what we’re doing and make some difficult decisions. Everyone’s future is on the line here: I need you to take a leadership role here and get us back on track before it’s too late.

(*Id.*) Berlamino also noted that WPIX was in last place and consistently losing to CBS. (Scott Dep. at 82-83; Scott Dep. Ex. 4.)

41. On May 23, 2005, Berlamino sent Scott, Mike Gano (Director of Engineering) and Jean Maye (Director of Human Resources) an e-mail that expressed her “concern[]” about the “overall performance of the late news”:

I am concerned about the overall performance of the late news. Bottom line: time is running out. If we don’t start to see some overall improvement in late news we will need to address very serious changes that will result in job losses and eventually put into question the long-term viability of the product. We continue to lose money in the newscast with no real visible plan of improvement.

(Scott Dep. at 53, 84-85; Scott Dep. Ex. 5.)

42. On September 21, 2005, Berlamino sent Scott an e-mail that referred to Tribune’s decision to outsource the News Departments at its stations in Philadelphia and San Diego. (Scott Dep. Ex. 7.) Scott understood and agreed with Berlamino’s concern that WPIX’s News Department would suffer the same fate in light of the fact that it was losing so much money. (Scott Dep. at 90-91.) Scott does not believe that Berlamino’s e-mail was discriminatory because of her age. (*Id.* at 91-92.)

43. In an October 20, 2005 e-mail to Scott, Berlamino stated: “Karen, as we’ve discussed, I’m deeply concerned about the direction of the News At Ten.” (Scott Dep. Ex. 8.) Berlamino went on to urge Scott to be more involved with the content of the show. (*Id.*)

44. On October 28, 2005, Berlamino sent Scott an e-mail entitled “Last Night’s News Numbers,” stating: “Needless to say, the news part of the Operating plan did not go well. Our two year P&L of projected losses was in essence rejected.” (Scott Dep. at 109-10; Scott Dep. Ex. 9.) Scott understood this to mean that Tribune senior management was dissatisfied with the News Department’s profits and expected WPIX to earn more revenue. (Scott Dep. at 109-10; Scott Dep. Ex. 9.)

45. On that same day, Berlamino sent Scott an e-mail expressing her disappointment that, while the Nielsen rating for the lead-in program (*i.e.*, preceding show) for the News at Ten was 1.8, the rating dropped to 0.6 during the newscast. (Scott Dep. Ex. 9.) In comparison, Fox’s lead-in program had a 1.9 rating that increased to 2.1 during its news show, and WWOR’s lead-in program had a 0.8 rating that increased to 1.1 during its news show. (*Id.*) WPIX was the only New York City station that failed to maintain its lead-in program audience and the only station to lose its audience during its newscast. (Scott Dep. at 117.)

46. The examples in paragraphs 39 through 45 do not represent the entire record of performance issues Berlamino raised with Scott in 2005, as Berlamino sent Scott numerous e-mails throughout 2005, before and after Scott received her 2005 Performance Evaluation, highlighting the decline in ratings, poor on-air content, the continued loss of revenue, and directing Scott to deal with staff issues. (Cerasia Decl., Ex. K (WPIX 000101, 000108-09, 000111-13, 000116, 000133, 000137, 000150, 000155, 100060).)

47. Berlamino rated Scott higher on her 2006 Performance Evaluation as compared to 2005, and Scott believed that was favorable treatment by Berlamino. (Scott Dep. at 65-67; Scott Dep. Ex. 2.)

48. As of 2006, WPIX and Tribune began to push for the delivery of news feeds on

the internet throughout the day to increase revenue. (Scott Dep. at 34.) The different forms of online interactive media available on the internet became vital for WPIX to report breaking news throughout the entire day, as opposed to waiting until the News at Ten to do so. (*Id.* at 34, 40.)

49. Scott has no personal knowledge regarding the revenue power of the internet, but knew it was an important means of delivering the news and a resource to build up an audience. (Scott Dep. at 35-36, 156.) Scott expected the talent that reported to her to utilize the internet to promote shows and news. (*Id.* at 163.)

50. On August 6, 2008, Berlamino sent Scott (and others) an e-mail highlighting that the July 2008 Morning News' ratings reflected that, in each instance other than the initial one hour, the ratings dropped from 2007 to 2008. (Scott Dep. at 119-20; Scott Dep. Ex. 10.)

51. At some point in the Fall 2008, Berlamino sent an e-mail to the managers in the News Department, including Scott, warning all of them that their jobs were in jeopardy if the ratings did not increase. (Scott Dep. at 122-23.)

52. Scott understood that the poor performance of the News Department was a negative reflection on Berlamino's job performance. (Scott Dep. at 126.) Berlamino even told Scott that if the ratings did not increase and the News Department could not turn a profit, Berlamino's job also was on the line. (*Id.* at 233-34; Berlamino Dep. at 158.)

53. As early as his first visit to WPIX in the Fall of 2008, Charlier began to wonder if Scott was the right person for the job. (Charlier Dep. at 17, 50-51.) Charlier believed the newsroom was in "disarray," the on-air product was "TV 101," and inter-departmental relationships were poor. (*Id.* at 50-51, 44.)

54. Scott interacted with Charlier when he visited WPIX and during conference calls. (Charlier Dep. at 28-29.) There was no animosity or hostility between them, and Charlier did not

do anything towards Scott that she believed was unfair or discriminatory because of her age. (Scott Dep. at 99-100.)

55. In 2008, Charlier believed that the News at Ten needed “much” more relevant news content, that the on-air talent was “under perform[ing] - they were very poor,” and that WPIX had to get into the breaking news game. (Charlier Dep. at 41-42.)

56. Charlier advised Scott to build a better relationship with John Ziegler (“Ziegler”), the Department Head of the Creative Services Department, and to provide him with better content to promote WPIX’s News programs. (Scott Dep. at 31; Berlamino Dep. at 23; Charlier Dep. at 44.) Charlier believed Scott and Ziegler had to work together to increase ratings for the News. (Charlier Dep. at 44.)

57. Charlier believed that the focus had to be on providing content that WPIX could promote before being concerned about funding for promotion. (Charlier Dep. at 45-46, 48.) He believed WPIX needed to change the content so that they had something good to promote. (*Id.*) Charlier suggested several changes that he thought would improve the ratings, but Scott did not implement them and, as a result, the Nielsen ratings for the News continued to decline. (Charlier Dep. at 58-60, 64, 74-75.)

58. It was apparent to Tribune senior management that Scott was not grasping the concepts that they wanted implemented, especially with regard to how to use the internet for news. (Ramirez Dep. at 14.) In addition, Tribune senior management did not think that the staff analysis that Scott submitted would change the News in a way that would increase ratings. (*Id.* at 13-14, 16-17.)

59. On November 3, 2008, Berlamino sent an e-mail to Scott and the Producer for the Weekend Evening News, asking them to “take a hard look at the product [they are] putting on

the air” because the ratings were very poor. (Scott Dep. at 127; Scott Dep Ex. 11.) Berlamino emphasized that the ratings showed that viewers were tuned in when the News began, but they stopped watching during the program. (*Id.*) Berlamino also explained that this showed that the ratings for the News were not low because of “lead-in programming,” given that the audience was there but simply changed the channel during the News. (Scott Dep. at 128; Scott Dep. Ex. 11.) “Lead-in programming” is the program on the air immediately before the News airs. (Scott Dep. at 69.)

60. Scott understood that the ratings in Berlamino’s November 3, 2008 e-mail did in fact reflect that viewers began watching the News when it started, but then tuned out by the end of the show. (Scott Dep. at 128-29.) Lead-in programming cannot be to blame for the loss of viewers at the mid-point of the News program (*i.e.*, 10:30 p.m.) because once the News starts, it is the News Departments’ responsibility to retain the audience that was already tuned in. (*Id.* at 130.)

61. On November 19, 2008, Berlamino strongly suggested to Scott that she replace Tim Armstrong (“Armstrong”) as Executive Producer of the News at Ten because of the decline in ratings. (Scott Dep. at 133, 135-36; Scott Dep. Ex. 12.) Scott did not want to replace Armstrong, and he was not replaced at that time despite the fact that Scott knew that Armstrong’s poor performance was a negative reflection on her own performance. (*Id.*; Scott Dep. at 138.) Armstrong’s date of birth is [REDACTED], 1965. (Davis Decl., ¶ 3.)

62. On November 20, 2008, Berlamino sent Scott another e-mail expressing her disappointment with the ratings and urging Scott to increase her presence at the station. (Scott Dep. Ex. 13.) Specifically, Berlamino pointed out that this was the third time that, despite the fact that WPIX’s late news lead-in programming rating was higher than its competitor WWOR’s

late news lead-in programming (1.3 versus 1.1), WWOR's late news show ratings were almost three times stronger than WPIX's late news show (1.1 versus 0.4). (Scott Dep. at 136-37; Scott Dep. Ex. 13.)

63. On December 1, 2008, Berlamino circulated a comparison of the November 2008 sweeps ratings to the November 2007 sweeps ratings for WPIX, WWOR and FOX – the three television stations that ran a 10:00 p.m. newscast – which showed that WPIX was the only station that suffered a decline in ratings between 2007 and 2008. (Scott Dep. at 144-45; Scott Dep. Ex. 14.) Specifically, WPIX suffered a 42% decrease in viewership among the 25 to 54 adult demographic and a 25% decrease in viewership among the 18 to 49 adult demographic. (*Id.*)

64. After receiving the November 2008 sweeps ratings, Berlamino also told Scott that, if the Nielsen ratings did not increase, first Scott would be out of a job and Berlamino would be next. (Berlamino Dep. at 158.) Scott told Berlamino that she understood. (*Id.* at 161.) Berlamino documented their conversation about the outcome of the November sweeps, but mistakenly put the wrong date of “November 2, 2008” on her file note, when it should have reflected “December 2, 2008.” (Berlamino Dep. at 163-65, 169, 305-06; Berlamino Dep. Ex. 7.)

65. On December 12, 2008, Berlamino sent Scott an e-mail notifying her that News at Ten was now in third place. (Cerasia Decl., Ex. L. (WPIX 000180).) Berlamino also shared her criticisms of the previous evening's newscast and again called upon the News Department to reassess the on-air product. (*Id.*)

66. On December 29, 2008, Berlamino reminded the leaders of the News Department that they were losing revenue because they were not using the internet to deliver the news the same way that they were using television broadcasts. (Scott Dep. at 155; Scott Dep. Ex. 17.)

67. Berlamino also had to bring to Scott's attention the fact that there were newsworthy events occurring that WPIX was not covering – including a protest right outside WPIX's door. (Scott Dep. Exs. 16, 18.)

68. Charlier believed that by 2009, Scott was concerned about her continued employment because of the decline in the Nielsen ratings, Berlamino's repeated e-mails about the quality of the News' programming, and because of the changes Tribune was requesting. (Charlier Dep. at 66-67, 69.)

69. Over the course of the following year, Charlier continued to express to Berlamino that he did not believe that Scott was the person who could change the News around, increase ratings and make it profitable. (Berlamino Dep. at 152-54; Ramirez Dep. at 29.) Charlier explained to Berlamino that Scott did the News as a "hobby," but that WPIX needed the News to return to a "business proposition." (Berlamino Dep. at 153-54.)

70. Charlier also told Scott that there was pressure from Tribune to improve WPIX's News product and the ratings. (Charlier Dep. at 68.) He also explained to her that more changes would be coming. (*Id.*)

71. It also became clear to Charlier that Scott was not well-versed in, nor did she follow the rules of, the labor contracts for her Department. (Charlier Dep. at 60; Maye Dep. at 51.) This was evident during union negotiations, when Scott was asked questions about the labor contract and work practices, but she was unable to provide a detailed response. (*Id.*)

72. In early-2009, Jerry Kersting ("Kersting"), President of Tribune Broadcasting, told Berlamino that it was not her job to make decisions; rather, it was her job to execute Tribune's personnel decisions. (Berlamino Dep. at 25-26; Charlier Dep. at 13-14.) That was a dramatic change from the autonomy that Berlamino had enjoyed in the past at WPIX.

(Berlamino Dep. at 26.)

73. On January 19, 2009, Berlamino sent an e-mail reminding Scott (and others) that the News and Web Departments needed to merge. (Scott Dep. at 179-80; Scott Dep. Ex. 19.)

74. On February 17, 2009, Berlamino sent Scott an e-mail addressing the fact that Scott's staff needed to be held accountable for the chronic technical problems occurring during the News at Ten because those problems made the newscast difficult to watch and, as a result, the ratings declined. (Cerasia Decl., Ex. M (WPIX 000189).)

75. In March 2009, Berlamino continued to send e-mails to Scott expressing the gravity of the decline in the Nielsen ratings, the extensive loss of revenue the News Department was experiencing, and the need for innovative ideas to turn things around. (Cerasia Decl., Ex. N (WPIX 000191-193).)

76. On April 1, 2009, the News at Ten was the only newscast to fall for a practical joke staged by a notorious improv group. (Scott Dep. at 185-86; Scott Dep. Ex. 21.) The improv group told WPIX that they were crashing a funeral to gauge the reaction of the attendees when strangers arrived at the ceremony. (Scott Dep. Ex. 21.) WPIX aired the funeral and asked viewers for feedback on whether it was an appropriate practical joke or not. (*Id.*) As it turned out, however, the funeral that the improv group allegedly crashed was fake and the real practical joke was on WPIX for believing the improv group's story and being the only newscast in New York to air it on television. (*Id.*) As a result, WPIX was mocked. (*Id.*)

77. This practical joke occurred because Armstrong failed to verify the facts for the story and, thus, WPIX did not learn that it was a staged practical joke before the story aired. (Scott Dep. at 185-86.)

78. As a result of the practical joke on WPIX, Berlamino instructed Scott to contact

Charlier and inform him that they would move forward and replace Armstrong, as Berlamino had urged Scott to do five months earlier. (Scott Dep. at 140-41, 143, 187, 190-91; Scott Dep. Ex. 21.) Armstrong was 43 years of age at that time of his termination in April 2009. (*See* Davis Decl., ¶ 3.)

79. On April 1, 2009, Berlamino circulated a comparison of the March 2009 ratings and the March 2008 ratings for the News at Ten, showing that WPIX lost 33% of its viewers among the 25 to 54 adult demographic. (Scott Dep. at 182-84; Scott Dep. Ex. 20.) Berlamino later warned Scott that the ratings were going in this downward direction, and continued to raise awareness as the ratings spiraled downward in April 2009. (Scott Dep. Ex. 22; Cerasia Decl., Ex. O (WPIX 000230, 000232-35).) Berlamino also expressed her concern with regard to the poor content she observed during the News at Ten and the continued lack of news content on the web. (Cerasia Decl., Ex. O (WPIX 000231).)

80. By the Summer of 2009, Charlier continued to vocalize his doubts about Scott and question Berlamino regarding Scott's ability to implement the changes that Tribune senior management wanted to see in the News Department. (Berlamino Dep. at 152-53; Charlier Dep. at 49-50.) When Charlier initially voiced his doubts about Scott in 2008, Berlamino defended her and told Charlier that Scott was the right person for the job. (Charlier Dep. at 27-28, 51; Berlamino Dep. at 152-53, 242.)

81. By June 11, 2009, Charlier increased the amount of time he spent at WPIX and "was growing impatient" with what he learned was going on behind the scenes. (Charlier Dep. at 49.) Charlier also had received reports that his bosses in Chicago were not "happy with the product that they had seen" from the WPIX newsroom. (*Id.*) In addition, the Nielsen ratings continued to decline, the necessary expense reductions had not been made, and Charlier

continued to express his concern that Scott was not the right person to turn things around. (Charlier Dep. at 49-50; Ramirez Dep. at 19.)

82. Berlamino continued to defend Scott and gave Charlier her reasons for keeping Scott on as News Director. (Berlamino Dep. at 152-54, 242; Charlier Dep. 78-79.) It got to the point that, every time Charlier visited WPIX, Berlamino had to explain to him why she wanted to retain Scott. (Berlamino Dep. at 152.)

83. In the first week of June 2009, Berlamino again advised Scott and others about the poor ratings of the morning newscast and the need for the News Department to assess which staff members were working towards turning things around. (Cerasia Decl., Ex. P (WPIX 000245, 000251, 000253, 000261, 000280); Scott Dep. Ex. 23.) Berlamino again emphasized the need to hold people accountable for their mistakes, failure to update the internet, and if they were not taking steps to improve the news content or utilize the internet. (*Id.*)

VIII. Berlamino Succumbs To Pressure From Tribune Senior Management To Terminate Scott's Employment Because Her Continued Unsatisfactory Performance Showed That She Was Not The Right Person To Lead The News Department

84. In July 2009, Charlier requested a meeting with Berlamino to discuss changes that needed to occur at WPIX. (Charlier Dep. at 52-53.) On July 14, 2009, Charlier met with Berlamino in New York and became more "assertive" about Scott's future role with WPIX because he "didn't think that [Scott] was the person to take the product forward to make the changes we needed to make to build the station up and grow the ratings, the revenue." (*Id.*; Cerasia Decl., Ex. Q (WPIX 006809) (Charlier's expense account showing lunch with Berlamino on July 14).)

85. By that point, Charlier had decided that Scott needed to be replaced, and if Berlamino had continued to fight him on the issue, he was going to go forward and make the

change anyway because WPIX was in a crisis. (Charlier Dep. at 77-78.)

86. Faced with decreasing ratings and a negative cash flow for two years, Berlamino realized that she could no longer make excuses for Scott, so she told Charlier that:

She went back and had reviewed some of her notes over the past few years and decided that maybe it was time that she not hold on so tight and that we try and find somebody else who could come in with some ideas to maybe adapt to some of the things that we were talking about in our discussions and the recommendations that [Charlier] was making or Ed Wilson [President] or Randy Michaels [Chief Executive Officer] from a company standpoint.

(Berlamino Dep. at 242; Charlier Dep. at 53-54, 57, 78-79.)

87. Over the last two years of Scott's employment (2008 to 2009), the Nielsen ratings for WPIX's news programs (both morning and evening) had decreased anywhere from 20 to 40 percent. (Berlamino Dep. at 89, 235-36, 253; Scott Dep. Ex. 14 & 20.) That resulted in a loss for the News of more than \$10 million over the course of two years – over \$3 million in 2008 and \$7 million in 2009. (Berlamino Dep. at 89.)

88. When they met on July 14, 2009, Berlamino suggested to Charlier that, instead of terminating Scott's employment, they place her on a Performance Improvement Plan ("PIP"). (Berlamino Dep. at 128, 134; Charlier Dep. at 55.) In light of the decline in the ratings and the loss of millions of dollars, Charlier did not agree with Berlamino's suggestion and did not believe it was necessary to put someone of Scott's level on a PIP. (Berlamino Dep. at 128, 134, 156, 189, 252; Charlier Dep. at 53-54, 65.) Charlier also believed that all of the coaching Berlamino had done with Scott in the past made it evident that a PIP would not resolve Scott's issues. (Charlier Dep. at 56.)

89. At Charlier's direction, Berlamino contacted Myrna Ramirez ("Ramirez"), the Vice President of Human Resources at Tribune, to discuss the possibility of putting Scott on a

PIP. (Scott Dep. at 177; Charlier Dep. at 56; Ramirez Dep. at 38-39.)

90. Ramirez was located in Chicago and was only involved with WPIX when there was a significant event or high-level staffing issues. (Scott Dep. at 177; Ramirez Dep. at 7; Maye Dep. at 15-16.) Ramirez was the point person for all of the Human Resource professionals and the General Managers within Tribune Broadcasting. (Ramirez Dep. at 10.) Jean Maye (“Maye”) was the Director of Human Resources at WPIX from February 22, 2002 to June 22, 2010. (Maye Dep. at 7.)

91. Ramirez agreed with Charlier that putting Scott on a PIP was not the best course of action. (Ramirez Dep. at 34, 38, 40, 42; Berlamino Dep. at 156, 189; Charlier Dep. at 56, 65, 79-80.) Ramirez did not see the value in putting Scott on a PIP because she understood that Tribune senior management did not believe Scott was the right person to lead the newsroom. (Ramirez Dep. at 40.)

92. Scott was not terminated immediately in July 2009, because Berlamino was going on vacation for 13 days and did not think it would be appropriate to terminate Scott beforehand. (Berlamino Dep. at 157.)

93. In the interim, Amy Growick (“Growick”), Executive Producer for the Morning News, and Emily Frances (“Frances”), on-air talent for the Morning News, exhibited unprofessional behavior towards each other. (Scott Dep. at 196, 199; Berlamino Dep. at 47-48.) Growick, as well as Scott, took issue with Frances’ work attire and lateness. (Scott Dep. at 198-99, 203-04; Cerasia Decl., Ex. R (WPIX 000302-07, 000309-12).) In addition, Growick believed that Frances was insubordinate at times, while Frances did not like the manner in which Growick spoke to her. (*Id.*)

94. Growick and Frances initially went to Scott with their issues, but Scott did not

resolve them, so Growick and Frances went to Human Resources and Berlamino for a resolution. (Berlamino Dep. at 47-48; Maye Dep. at 23; Cerasia Decl., Ex. S (WPIX 000268, 000281).)

95. On August 4, 2009, Berlamino had to direct Scott to address the conflict between Frances and Growick because she believed that they would not be able to turn the decline in ratings around without a cohesive team. (Scott Dep. at 200; Scott Dep. Ex. 24; Cerasia Decl., Ex. T (WPIX 000297, 000315).) Berlamino believed that Scott allowed the issues to fester for too long and had not taken control of the situation. (*Id.*)

96. Berlamino also did not terminate Scott immediately upon her return from vacation at the beginning of August 2009, because she hoped that she would not have to go through with it. (Berlamino Dep. at 157.)

97. On August 4, 2009, Berlamino sent Scott an e-mail concerning the Nielsen ratings for the Morning News Show, stating that as a result of the ratings: “We are now at a point where we can barely sell our spots.” (Scott Dep. Ex. 25; Scott Dep. at 207.) Berlamino pointed out that not only was WPIX in last place among its competitors, but it continued to lose viewership. (*Id.*) She directed Scott to conduct a “thorough analysis” of her staff and determine if they were right for the job. (*Id.*) Berlamino made clear that Scott’s analysis should include a review of the internet and WPIX’s presence on various social networking sites. (*Id.*) Berlamino asked Scott to provide her with the results of her analysis by the end of the week. (*Id.*)

98. That was not the first time that Berlamino called upon Scott to evaluate her staff to determine if they could turn around the ratings and to monitor the internet to make sure her staff was utilizing the internet to its fullest potential. (Scott Dep. at 209-10.) Berlamino asked Scott to do that in 2008, in an effort to increase ratings. (*Id.*) Scott understood that the ratings needed to increase immediately. (*Id.* at 211.)

99. Scott provided Berlamino with her analysis as requested, which included a recommendation to not renew Larry Hoff's contract when it expired on December 31, 2009. (Scott Dep. at 212-13; Scott Dep. Ex. 26.)

100. On August 10, 2009, Berlamino sent Scott an e-mail and told her that the Weekend News was "hard to watch" and that she "turn[ed] off last night's broadcast after about 15 minutes." (Cerasia Decl., Ex. U (WPIX 000322).)

101. On August 17, 2009, Berlamino, again, admonished Scott and the Executive Producers for their failure to grasp the concept that the news is not just for television and they needed to "work differently than they have in the past" by using the internet to report breaking news. (Cerasia Decl., Ex. V (WPIX 000326).) The following day, Berlamino pointed out that Twitter had not been updated in five days. (Cerasia Decl., Ex. V (WPIX 000331).)

102. At the direction of Ramirez and based on documents Berlamino maintained in a file she kept on Scott, Berlamino prepared a written summary, dated August 17, 2009, with examples of Scott's performance issues going back to 2004. (Berlamino Dep. at 182-83, 186-87; Berlamino Dep. Ex. 9; Ramirez Dep. at 35, 42.) Berlamino's summary recapped some of the instances where she had warned Scott about the need for her to make tough decisions to turn around the News and increase ratings. (Berlamino Dep. at 191-92, 205; Berlamino Dep. Ex. 9; Ramirez Dep. at 42.)

103. After her continued discussions with Ramirez and review of additional information regarding profits and ratings, Berlamino concluded that Scott's employment would be terminated. (Berlamino Dep. at 157.) Ramirez agreed with the decision to terminate Scott's employment. (Ramirez Dep. at 40.)

104. Up until the day she was terminated on August 26, 2009, Scott believed that

Ramirez always treated her professionally and fairly, that they had a good working relationship, and that there was no hostility or animosity between them. (Scott Dep. at 178-79.)

105. Ramirez conducted an adverse impact analysis, as she always did in connection with a termination of an employee that was a member of one or more protected class, especially because in 2008 and 2009, the News staff at WPIX had longevity and therefore was comprised of a large percentage of individuals over age 40. (Ramirez Dep. at 68-69, 104, 106.)

106. On August 26, 2009, Berlamino asked Scott to meet with her in the conference room. (Scott Dep. at 227.) When Scott arrived, she was met by Berlamino and Ramirez. (*Id.*; Ramirez Dep. at 85.)

107. Ramirez, as opposed to Maye, was involved in the termination decision and meeting because Scott held a high-level management position at WPIX. (Ramirez Dep. at 48; Maye Dep. at 16.) While Maye only learned of Scott's termination shortly before it happened, Maye believed that, based on the types of questions that Tribune senior management had been posing, the amount of time they were spending at WPIX, the expressed frustration with the declining ratings, and Scott's inability to change the News product, senior management was not pleased and Scott's employment was in jeopardy. (Maye Dep. at 40-42, 45-46, 50-51, 53.)

108. At the August 26 meeting, Berlamino told Scott that her employment was being terminated. (Scott Dep. at 228.) Berlamino read from a script that was prepared by Ramirez, with advice from one of Tribune's in-house employment lawyers. (Berlamino Dep. at 189; Berlamino Dep. Ex. 34.) Berlamino had been instructed to read from the script only and not deviate from it. (Berlamino Dep. at 257-58, 365-66, 368; Ramirez Dep. at 86.) Berlamino generally informed Scott that the termination was based on Scott's performance deficiencies and the declining ratings, and that it was time for WPIX to make a change. (Berlamino Dep. Ex. 34;

Berlamino Dep. at 258.)

109. Scott requested, and Berlamino and Ramirez agreed, to not inform her staff of her termination at that time because she was going on vacation that evening and did not want them to get the announcement while she was out of the office for a few days. (Scott Dep. at 287-88; Ramirez Dep. at 92.) For reasons unbeknownst to Scott, Ramirez or Berlamino, news of Scott's termination had leaked and her staff called her while she was on vacation to confirm that she was leaving WPIX. (Scott Dep. at 287-88; Ramirez Dep. at 99-100.)

110. On August 31, 2009, Scott's first day back from vacation, Berlamino sent to Scott for her review and comment a draft of an e-mail that Berlamino was going to circulate to the entire staff to announce Scott's departure. (Scott Dep. Ex. 30.) In the e-mail, Berlamino characterized Scott's departure as a "resignation." (Scott Dep. at 284-86; Scott Dep. Ex. 30.) Scott did not want her separation of employment to be described as a resignation, but Berlamino thought it was best to characterize Scott's separation as a resignation. (Berlamino Dep. at 260; Scott Dep. at 292-93.) A little less than two hours later, Berlamino sent the e-mail to everyone at WPIX. (Scott Dep. at 292; Scott Dep. Ex. 31.)

111. Berlamino authorized and attended, and WPIX paid for, a farewell party for Scott. (Berlamino Dep. at 260.)

IX. Scott's Replacement Was Almost Age 52

112. Charlier told Berlamino to hire Bill Carey ("Carey") to replace Scott as WPIX's News Director. (Berlamino Dep. at 29-30, 262; Charlier Dep. at 100.) Carey had been employed at Local TV, which is a company with which Tribune has a management services agreement, and Charlier was aware that Carey was well regarded at Local TV. (Charlier Dep. at 6, 98-99; Berlamino Dep. at 38.) Carey's date of birth is [REDACTED] 1958, which made him

almost age 52 when he started at WPIX on November 30, 2009. (Davis Decl., ¶ 4; Berlamino Dep. at 29.)

113. Berlamino believed that Carey was more qualified than Scott to carry out the directive from Tribune senior management, namely: to change the News and to become more of an electronic News Department with a strong presence on the internet that could increase the ratings and make a profit. (Berlamino Dep. at 28, 32.)

X. Scott Admits There Was No Discrimination With Regard To Her Compensation

114. In 2007, Scott's annual salary was \$239,803 and her incentive pay (for 2006 performance) was \$68,000. (Scott Dep. Ex. 3; Berlamino Dep. at 146.) The target for Scott's incentive pay was 40% of her salary (\$239,803), which meant that in 2007 she was eligible to receive an incentive up to \$95,921. (Berlamino Dep. at 146-47; Scott Dep. Ex. 3.)

115. Berlamino treated Scott favorably in 2008, when she increased Scott's salary and awarded her incentive pay in the amount of \$75,000. (Scott Dep. at 76; Scott Dep. Ex. 3.) The target for Scott's incentive pay was 40% of her salary (\$246,997), which meant that in 2008 she was eligible to receive an incentive up to \$98,798. (Berlamino Dep. at 146-47.)

116. Scott did not receive a salary increase from 2008 to 2009. (Scott Dep. at 77.) While Scott was awarded incentive pay in 2009 (for 2008 performance), it was only in the amount of \$11,015, which was far below her target of 40% of her salary (40% of \$246,997 = \$98,798.). (Berlamino Dep. at 147; Scott Dep. Ex. 3.)

117. Scott does not allege that any part of her 2008 pay was discriminatory because of her age. (Scott Dep. at 77.) Scott does not allege that her pay scale at WPIX was discriminatory or otherwise set because of her age. (*Id.* at 125.)

**XI. Scott's Excuses For Her Unsatisfactory Performance
And Decrease In The Nielsen Ratings**

118. Scott believed that the lead-in programming for the News at Ten was “horrible” from 2000 to 2009 – including in years when the News’ ratings were good and the other competitor stations had better lead-ins. (Scott Dep. at 112-14.)

119. Scott believed that WPIX’s lead-in for the News was inferior to its competitors and as a result the ratings were low. (Compl., ¶ 25; Scott Dep. at 69.)

120. The CW network, and not WPIX, was responsible for the lead-in programming for the News at Ten. (Scott Dep. at 113.) Programming decisions were made by the Corporate Program Director and Regional Program Director (East Coast and West Coast) on behalf of Tribune, and from 2007 to 2009, the Group Program Head was Sean Compton (“Compton”). (Berlamino Dep. at 13, 18, 73.) While the Program Directors would ask Berlamino for her opinion in connection with programming, the Program Directors made the ultimate decisions. (Berlamino Dep. at 13-14, 73-74.) As an affiliate, WPIX had to accept the lead-in programming it was provided. (Berlamino Dep. at 102.)

121. Tribune’s other stations had the same lead-in programming as WPIX. (Scott Dep. at 69.) Specifically, KTLA in Los Angeles, California and WGN in Chicago, Illinois both had the same lead-in programming as the WPIX News at Ten for their late night news shows, but they were able to retain three times the viewership as compared to WPIX in the 25 to 54 adult demographic with the same exact lead-in. (Scott Dep. at 69-70, 192, 194; Scott Dep. Ex. 22.) For example, on April 23, 2009, KTLA’s late news program delivered a 1.5 rating and WGN’s late news program delivered a 2.8 rating, with the same lead-in programming as WPIX’s late news program that delivered a 0.4 rating only. (Scott Dep. Ex. 22.)

122. Scott assumed that the decline in ratings for the News at Ten between 2007 and

2008 was because the other New York stations that aired 10 p.m. newscasts had lead-in programming with higher ratings than WPIX's lead-in programming. (Scott Dep. at 145-47.)

123. While Scott alleges that the WPIX's lead-in programming was to blame for the low ratings, the lead-in ratings reflected the opposite in 2005, receiving Nielsen ratings almost three times larger than the News at Ten's audience, which shows that the viewers were watching WPIX and then tuned out during the newscast. (Scott Dep. at 116-18; Scott Dep. Ex. 9.)

124. While good lead-in programming was helpful to ratings, since the 1990's, it had become less relevant to a successful newscast. (Charlier Dep. at 39.)

125. Scott also believed that WPIX did not have the same resources that other news departments at its competitors had to allocate to their programming. (Scott Dep. at 64-65.) Specifically, Scott alleges that WPIX paid the lowest salaries in the markets, which she believed resulted in a high turnover rate for employees. (*Id.* at 64.)

126. WPIX had some very good years when the ratings were high and it beat its competitors. (Scott Dep. at 64-65.) This occurred during years when Scott believed WPIX had less resources than its competitors and offered a lower pay scale. (*Id.* at 65.)

127. Scott also claims that the Morning News show ratings were low because the show was not promoted as well as other morning shows in New York. (Scott Dep. at 148-49; Berlamino Dep. at 174-75.)

128. The budget for money to be spent on off-air promotion of news shows was prepared by the Creative Services Director. (Berlamino Dep. at 23.) Initially, Scott was responsible for on-air promotions and marketing of the News programs, but she later requested that this be handled by Creative Services. (*Id.* at 66.)

129. The purported lack of promotional support for the News had nothing to do with

Scott's age. (Scott Dep. at 132-33, 151-52.)

XII. Scott's Allegations Of Age-Related Comments Toward Herself And Other Employees²

130. Scott alleges that, in November of 2003, Berlamino told her that she was "walking like a grandmother" because she was walking with a limp, around the time she was going to have surgery on her leg. (Scott Dep. at 175-76.)

131. Scott's contention that she was terminated because of her age is based on the fact that she was 60 years of age at the time her employment was terminated and she believed that her performance did not warrant the termination of her employment. (Scott Dep. at 234-36.)

132. Scott also bases her age discrimination claims on alleged age-related comments Berlamino made about other WPIX employees that she either purportedly demoted, fired or did not renew their contracts, as addressed in paragraphs 133 through 179 below. (Scott Dep. at 236.)

A. Larry Hoff

133. Larry Hoff ("Hoff") was a morning show features reporter who was known for his dare devil stunts. (Berlamino Dep. at 277.) Hoff's date of birth is [REDACTED] 1951. (Davis Decl., ¶ 5.)

134. Scott alleges that, since 2002, Berlamino said Hoff was "too old . . . repetitious, and . . . not good." (Scott Dep. at 213, 217-18, 220-21.)

135. Scott also alleges that Berlamino called her, almost daily, to tell her that she did not like what Hoff was doing on the air. (Scott Dep. at 213, 216.)

² Berlamino denies that age was a factor she considered in deciding to terminate Scott's employment at WPIX. (Berlamino Dep. at 254.) Berlamino also denies that she ever made any age-related comments about Scott or any WPIX employees. (*Id.* at 279-80, 284, 288; Answer, ¶ 40.)

136. In 2009, WPIX decided to follow Scott's recommendation to eliminate Hoff's feature stories and allocate the extensive resources expended on those stories to more serious news. (Berlamino Dep. at 278-79; Charlier Dep. at 35-36; Scott Dep. Ex. 26.)

137. Berlamino asked Scott whether, in lieu of termination, Hoff was interested in being a sports reporter because he had experience in the area, but Scott told Berlamino that Hoff would not do sports reporting. (Berlamino Dep. at 278-79.)

138. Hoff was hired in 2001, when he was 50 years of age, and his contract was up for renewal every two years thereafter. (Scott Dep. at 215-16, 218; Davis Decl., ¶ 5.) Berlamino approved the renewal of Hoff's contract about three times before the non-renewal in 2009. (Scott Dep. at 215-16, 218.)

139. Scott never told anyone in Human Resources, either at WPIX or Tribune, that Berlamino allegedly told her that Hoff was "too old." (Scott Dep. at 218, 221-22; Maye Dep. at 79.)

B. Barry Cunningham

140. Scott also bases her age discrimination claims on the non-renewal of reporter Barry Cunningham's ("Cunningham's") contract in 2002. (Scott Dep. at 237, 249.)

141. Scott alleges that Berlamino said that Cunningham was "too old" and did not "look good on-air." (Scott Dep. at 254.) Scott alleges that she cautioned Berlamino against the decision to not renew Cunningham's contract because Scott believed that Cunningham was age 58 at the time. (*Id.* at 257.)

142. Shortly after September 11, 2001, Cunningham made some remarks on the air that were critical of President Bush and viewers complained to WPIX. (Scott Dep. at 250-51.) Scott thought the remarks were inappropriate. (*Id.* at 251-52.) That was the second time that Cunningham used poor judgment on the air. (*Id.* at 252.) A few years before the inappropriate

remarks about President Bush, Scott issued Cunningham a final warning because he brought a stripper into the studio and interviewed her naked. (*Id.*) Despite this, Scott claims she did not agree with the decision to not renew his contract. (*Id.* at 253-54.)

143. Scott never told anyone in Human Resources, either at WPIX or Tribune, that she believed Berlamino did not want to renew Cunningham's contract in 2002 because of his age. (Scott Dep. at 255; Maye Dep. at 79.)

C. Marvin Scott

144. Scott also bases her age discrimination claims on the purported demotion of Marvin Scott ("M. Scott") in 2002. (Scott Dep. at 238, 257-58.)

145. M. Scott began his employment as a weekly reporter with WPIX in 1980. (Deposition of Marvin Scott ("M. Scott Dep.") at 6.) M. Scott's date of birth is [REDACTED] 1937. (M. Scott Dep. at 25.)

146. Scott alleges that Berlamino removed M. Scott as a weekend anchor and assigned him to reporting in 2002, because she thought he was "too old." (Scott Dep. at 257-58; M. Scott Dep. at 9, 15.) In addition, Scott alleges that Berlamino stated "isn't he ready to retire yet, why hasn't he retired yet" when M. Scott's contract was up for renewal in 2008. (Scott Dep. at 258, 260.)

147. Despite these allegations, Berlamino renewed M. Scott's contract in 2008, as well as in prior years, and he remains employed by WPIX. (M. Scott Dep. at 6; Scott Dep. at 239.) Berlamino also approved M. Scott's request to go to Iraq and do a story on U.S. troops during Christmas of 2004. (M. Scott Dep. at 41-42.)

148. In 2009, M. Scott's schedule was changed to include weekend reporting in an effort to increase the "extremely low" ratings for the weekend News. (Berlamino Dep. at 282-83.) That schedule change did not result in a reduction in M. Scott's salary or a change in his

duties and responsibilities; all that changed were the days that he worked. (M. Scott Dep. at 15, 32-33.)

149. M. Scott is the only reporter that has his own weekly news show – News Close-Up, which airs on Sundays. (Scott Dep. at 280; Berlamino Dep. at 281; M. Scott Dep. at 7.) While News Close-Up’s launch preceded Berlamino’s employment at WPIX, she continued to approve it and never took it off the air. (Scott Dep. at 280-81.)

150. M. Scott invited Berlamino to his wedding. (M. Scott Dep. at 23.)

D. Sal Marchiano

151. Scott also bases her age discrimination claims on the non-renewal of sports anchor Sal Marchiano’s (“Marchiano’s”) contract in late-2008. (Scott Dep. at 239, 260.) Marchiano’s date of birth is [REDACTED] 1941. (Davis Decl., ¶ 6.)

152. Scott alleges that Berlamino said she would not renew Marchiano’s contract beyond December 31, 2008, because she did not like him and said “he looks like he’s phoning in, he doesn’t react well on the set, and he seems to be too old.” (Scott Dep. at 261-62.)³

153. Marchiano was replaced by Lolita Lopez (“Lopez”), who had been the weekend sports anchor and a field reporter three days a week at WPIX. (Scott Dep. at 160.) Scott was involved in making the decision to place Lopez in Marchiano’s prior sports anchor position on the News at Ten, as she believed that Lopez deserved it. (*Id.*) In particular, Lopez utilized the internet and kept the postings up-to-date, while Marchiano did not utilized the internet to post news or stories. (*Id.* at 161, 164-65, 168.)

154. In the Summer of 2008, Marchiano did a special show at Shea Stadium relating

³ The allegations contained in Scott’s sworn Charge filed with the Equal Employment Opportunity Commission (“EEOC”) and her Complaint before the Court do not include an allegation that Berlamino referred to Marchiano as “too old.” (Scott Dep. at 264-67; Scott Dep. Exs. 27 & 28.)

the Subway Series that did not go well. (Scott Dep. at 270; Berlamino Dep. at 280.) Berlamino felt that Marchiano looked “unprepared,” “unprofessional” and “like he’s phoning it in,” and that show was one of the reasons leading to a decision not to renew his contract. (Berlamino Dep. at 280-81.)

E. Janet Maslow

155. Scott also bases her age discrimination claims on the termination of Janet Maslow (“Maslow”), the Accounting Manager for the News Department. (Scott Dep. at 238; Berlamino Dep. at 288.) Maslow’s date of birth is [REDACTED] 1942. (Davis Decl., ¶ 7.)

156. Charlier eliminated Maslow’s job because that position did not exist at any other station owned by Tribune, and no one was hired to replace her. (Scott Dep. at 238; Berlamino Dep. at 288-89.) Berlamino had no role in the decision to eliminate Maslow’s job. (Berlamino Dep. at 289.)

F. Mary Murphy

157. Scott also bases her age discrimination claims on the purported demotion of reporter Mary Murphy (“Murphy”) in 2009. (Scott Dep. at 238, 274-75.)

158. Murphy began her employment with WPIX in 1993. (Scott Dep. at 274.) Murphy was the anchor on the weekend news, filled-in for Kaity Tong as the anchor on the News at Ten, and was a reporter three days a week. (Scott Dep. at 273.) Murphy also did fact findings because she was an investigative reporter. (*Id.*)

159. Murphy’s date of birth is [REDACTED] 1959. (Davis Decl., ¶ 8.) She is the same age as Berlamino. (*Id.*, ¶¶ 2, 8.)

160. In 2009, Murphy went from being a weekend anchor to an investigative reporter. (Scott Dep. at 275; Berlamino Dep. at 286.) Scott alleges that Berlamino did not like Murphy anchoring because “she looked old” and “had frumpy clothes.” (Scott Dep. at 273-74, 276.)

Despite Scott's allegation that Berlamino made these comments in the "early 2000's," Berlamino continued to renew Murphy's employment contract during the time that Berlamino was the General Manager. (Scott Dep. at 275-76.)

161. Berlamino changed Murphy's position in an effort to increase the weekend News' ratings because they had declined to the point that WPIX had to give away advertising slots for free. (Berlamino Dep. at 287.)

162. Scott never reported Berlamino's alleged comments about Murphy to Human Resources, either at WPIX or Tribune. (Scott Dep. at 281; Maye Dep. at 79.)

G. Kaitly Tong

163. Scott also bases her age discrimination claims on the "demotion" of former-news anchor Kaitly Tong ("Tong") in October 2010. (Scott Dep. at 241.) Tong's date of birth is [REDACTED] 1949. (Deposition Transcript of Kaitly Tong ("Tong Dep.") at 58.)

164. Scott alleges that Berlamino said she wanted to "get rid" of Tong because Tong was "phoning it in" and because Tong was "too old for anchoring all the time." (Scott Dep. at 245.)

165. Scott admits she has no personal knowledge as to whether Berlamino made any decision with regard Tong's employment with WPIX in 2010, because neither Scott nor Berlamino were employed by WPIX when Tong was demoted in October 2010. (Scott Dep. at 249; Tong Dep. at 34, 71.)

166. In early-June 2009, Tribune conducted a research study and the results showed that Tong was not popular among viewers. (Berlamino Dep. at 228-29; Berlamino Dep. Ex. 14; Charlier Dep. at 30, 58-59; Ramirez Dep. at 78.) As a result, Tribune senior management believed Tong should no longer continue as the lead anchor for the News at Ten. (*Id.*)

167. Berlamino questioned the accuracy of the research, and she urged Tribune senior

management to disregard the results and not remove Tong as lead anchor. (Berlamino Dep. 229-30; Berlamino Dep. Ex. 14.) Berlamino sought and obtained assistance from Ramirez in saving Tong's anchor position. (Berlamino Dep. at 223, 231; Berlamino Dep. Ex. 14.) In exchange, Tribune senior management required that Tong be informed of the results of the research, be given a Performance Expectation Memo ("PEM"), and take a reduction in her salary. (Berlamino Dep. at 231; Tong Dep. at 11-12, 34-35, 38-39.)

168. Neither Berlamino nor Scott agreed with issuing Tong the PEM or the results of the research, but it was the only way Tribune senior management would allow Tong to remain as the lead anchor. (Berlamino Dep. at 227, 231-32; Charlier Dep. at 62.)

169. Tong never discussed the PEM or her salary reduction with Berlamino directly. (Tong Dep. at 37.) Everything that Tong knows or believes about what occurred in June 2009 is based on Scott's version of events. (*Id.* at 36, 39-42.)

170. Scott told Tong that Berlamino did not like Tong and had expressed on various occasions that she thought Tong was "too old." (Tong Dep. at 13, 17-18.) Scott advised Tong to retain an attorney for age discrimination. (*Id.* at 13.)

171. Tong never heard Berlamino make any age-related comments about her. (Tong Dep. at 20.) In fact, they enjoyed a good work relationship; they had lunch together and were friendly to each other. (*Id.* at 44.) It was only through Scott that Tong learned about Berlamino's alleged age-related comments about Tong. (*Id.* at 17-18, 45, 60-61.)

172. Based solely on what Scott told her, Tong believed that Berlamino discriminated against her because of her age. (Tong Dep. at 70.)

173. Tong does not believe that Charlier discriminated against her because of her age. (Tong Dep. at 49.)

174. Scott never reported Berlamino's alleged comments about Tong to Human Resources, at WPIX or Tribune. (Scott Dep. at 247; Maye Dep. at 79.)

H. Vanessa Tyler

175. Scott also bases her age discrimination claims on the non-renewal of Vanessa Tyler's employment contract after WPIX closed the New Jersey bureau. (Scott Dep. at 278.)

176. Tyler was a reporter in WPIX's New Jersey bureau. (Scott Dep. at 277-78.) When WPIX closed the New Jersey bureau in July 2009, it eliminated Tyler's position. (Scott Dep. at 278; Davis Decl., ¶ 10.)

177. Tyler's date of birth is [REDACTED], 1959. (Davis Decl., ¶ 9.) She is the same age as Berlamino. (*Id.*, ¶¶ 2, 9.)

178. Scott alleges that, when the New Jersey bureau closed, Tyler could have become a reporter in New York, but Scott believes Tyler was not given the opportunity to do so because Berlamino allegedly thought Tyler "didn't dress appropriately for a reporter" and because she was "too old." (Scott Dep. at 278.)

179. Scott never reported Berlamino's alleged comments about Tyler to Human Resources, either at WPIX or Tribune. (Scott Dep. at 281; Maye Dep. at 79.)

XIII. The EEOC Dismissed Scott's Charge On The Merits

180. On January 14, 2010, Scott filed a Charge with the EEOC, alleging that WPIX terminated her employment because of her age. (Scott Dep. at 264; Scott Dep. Ex. 27.) Scott's EEOC Charge contains virtually the same allegations as those in her Complaint in this case, except that the allegations contained in Scott's sworn Charge filed with the EEOC do not include the allegation that Berlamino referred to Marchiano as "too old." (Scott Dep. at 264-65; *Compare* Scott Dep. Ex. 27, *with* Scott Dep. Ex. 28.)

181. On or about January 7, 2011, the EEOC issued a two-page determination letter to

Scott, stating: “Based upon an analysis of the information submitted to us, the Commission is unable to conclude that the information establishes a violation of federal law on the part of the Respondent.” (Scott Dep. at 272; Scott Dep. Ex. 29.) The EEOC’s letter further stated that “there is insufficient evidence to indicate that Respondent [WPIX] treated you differently because of your [age].” (Scott Dep. Ex. 29.)⁴

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August 12, 2011

Respectfully submitted,

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⁴ The EEOC’s letter contained a typographical error: it used the word “disability” instead of “age,” even though the rest of the letter clearly referred to Scott’s allegations of “age” discrimination only. (See Scott Dep. Ex. 29.)